

## Message Text

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INFO OCT-01 ISO-00 SEC-01 L-03 JUSE-00 /017 R

DRAFTED BY EUR/CE:SMKLINGAMAN:SEC/ENFORCEMENT:IBOROWSKI:R

APPROVED BY L/EUR:HRUSSELL

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FM SECSTATE WASHDC

TO AMEMBASSY BERN IMMEDIATE

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FOR ED KEMPE

E.O. 11652: N/A

TAGS: CFED, SZ

SUBJECT: SEC V AIC CASE

1. DEPARTMENT HAS RECEIVED FOLLOWING MESSAGE FROM  
BOROWSKI FOR KEMPE.

2. BEGIN TEXT. THIS IS IN RESPONSE TO THE THREE PROBLEMS  
WHICH YOU'VE INDICATED THE SWISS BANKING COMMISSION HAS  
WITH THE PROPOSED SWISS BANKING COMMISSION DECREE.

3. THE FIRST OF THE PROBLEMS IS THAT THE SWISS BANKING  
COMMISSION BELIEVES IT CAN ONLY DESIGNATE A SWISS AUDITOR  
AS THE AUDITOR FOR THE PURPOSE OF THE SWISS BANKING COM-  
MISSION DECREE BECAUSE THEIR JURISDICTION WOULD ONLY  
EXTEND TO SUCH SWISS AUDITORS. ACCORDINGLY, THEY COULD ONLY  
DESIGNATE COOPERS LYBRAND 7 CO. OF BASEL AS AUDITORS FOR  
THE PURPOSE OF THIS DECREE. AS WE HAVE INDICATED TO YOU  
ORALLY WE DON'T FULLY UNDERSTAND THIS ISSUE. THE  
LANGUAGE OF THE PROPOSED DECREE CONTEMPLATES THE APPOINT-  
MENT OF AN INTERNATIONAL AUDITOR WHICH IS ONE THAT WE  
CERTAINLY THOUGHT WOULD BE OPERATIVE BOTH IN THE U.S. AND  
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IN SWITZERLAND. MORE IMPORTANTLY, THE AUDIT ACTIVITIES  
WHICH THE SPECIAL AUDITOR WILL PERFORM ARE TO BE DONE  
WITHIN THE TERRITORIAL BOUNDARIES OF SWITZERLAND AND WOULD

THUS BE SUBJECT TO SWISS JURISDICTION, WHICH WOULD GIVE THE SWISS BANKING COMMISSION CONTROL OVER THEIR ACTIVITIES. ALSO, THE AUDITOR HAS AGREED TO OPERATE UNDER THE TERMS OF THE DECREE AND HAS THUS SUBJECTED HIMSELF TO THE JURISDICTION OF THE SWISS BANKING COMMISSION. FROM OUR POINT OF VIEW, BASED ON ASSURANCES THAT COOPERS & LYBRAND WERE ACCEPTABLE AND THAT THE U.S. PARTNERS AND ASSOCIATES OF COOPERS WOULD BE ABLE TO CONDUCT THE AUDIT, WE APPROACHED THE COURT AND ASKED IT TO DESIGNATE COOPERS SPECIAL AUDITORS UNDER THE TERMS OF A JUDGMENT WHICH HAS BEEN ENTERED AGAINST AIC AND AIER, AND ALSO APPROVING THEIR ACTING UNDER THE SWISS BANKING COMMISSION DECREE. THE COURT, IN DESIGNATING COOPERS LYBRAND, WAS OF COURSE TALKING ABOUT THE COOPERS LYBRAND WITH WHOM IT WAS FAMILIAR (US) AND WAS ACTING ON THE RECOMMENDATION OF THE SPECIAL COUNSEL. THE SPECIAL COUNSEL HAD MADE HIS RECOMMENDATION OF COOPERS LYBRAND BASED ON HIS KNOWLEDGE OF CERTAIN INDIVIDUALS IN THE BOSTON OFFICE OF COOPERS LYBRAND WITH WHOM HE HAD WORKED IN THE PAST AND WHO HE EXPECTED TO CONTINUE TO WORK WITH IN THIS MATTER. IT WOULD THUS BE IMPOSSIBLE FOR US TO ACCEPT A SITUATION IN WHICH U.S. COOPERS LYBRAND WOULD NOT BE INVOLVED IN THE AUDIT AND NOT DESIGNATED FOR THAT PURPOSE.

4. HOWEVER, IN ORDER TO AVOID A PROBLEM OVER THIS MATTER

WE HAVE TWO SUGGESTIONS TO MAKE. THE FIRST IS THAT THE SWISS BANKING COMMISSION DESIGNATE COOPERS LYBRAND WITH OFFICES IN THE U.S. AND SWITZERLAND, AND THEREBY AVOID THE PROBLEM. THE OTHER IS TO DESIGNATE COOPERS LYBRAND OF BASEL BUT TO REQUIRE THAT IT ENGAGE IN THE ACTIVITIES REQUIRED OF IT AS SPECIAL AUDITOR JOINTLY WITH THE COOPERS LYBRAND WITH OFFICE IN NEW YORK CITY. WE HAVE NOT REVIEWED EITHER OF THESE PROPOSALS WITH THE SPECIAL COUNSEL OR COOPERS LYBRAND AND WE WOULD HAVE TO DO THIS BEFORE WE COULD GIVE OUR FINAL APPROVAL.

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5. THE SECOND PROBLEM IS THAT THE SWISS BANKING COMMISSION WOULD LIKE TO PROVIDE THAT THE AUDIT BE DONE IN ACCORDANCE WITH US AND SWISS STANDARDS OF AUDITING. WE WOULD HAVE NO PROBLEM WITH THAT. HOWEVER, WE UNDERSTAND THERE MAY BE SUBSTANTIAL DIFFERENCES BETWEEN THE AUDITING STANDARDS IN THE RESPECTIVE COUNTRIES, SO WE WOULD INTERPRET THIS PROVISION AS REQUIRING THAT THE MORE STRINGENT AUDITING STANDARD WOULD BE APPLIED.

6. THE THIRD ISSUE RAISED IS A REQUEST FOR AN EXPLANATION OF WHY THE SEC MUST HAVE ACCESS TO THE NAMES OF INVESTORS AND WHY IT IS NOT ADEQUATE FOR THAT INJUNCTION TO BE

TURNED OVER TO COOPERS LYBRAND. THE PROPOSED SWISS BANKING COMMISSION DECREE REQUIRES THAT THE SEC BE SATISFIED AS TO VARIOUS MATTERS CONTEMPLATED BY THE DECREE INCLUDING THE MANNER AND METHOD OF DISTRIBUTION TO INVESTORS. WE DO NOT BELIEVE WE CAN FULFILL OUR RESPONSIBILITIES IN THIS REGARD WITHOUT HAVING ACCESS TO ALL OF THE INFORMATION AVAILABLE WHICH INCLUDES THE NAMES OF INVESTORS. IN THE ABSENCE OF THIS INJUNCTION WE SIMPLY WILL HAVE TO BE DEALING WITH CERTAIN ASPECTS OF THE MATTERS ON WHICH WE WILL HAVE TO RENDER JUDGMENTS BLINDLY AND WITHOUT ASSURANCE THAT ALL OF THE INFORMATION WE NEED IS AVAILABLE OR THAT THE ACTIONS CONTEMPLATED BY THE DECREE ARE BEING EFFECTIVELY CARRIED OUT. WE SHOULD ALSO REMEMBER THAT WE HAVE WITH GREAT DIFFICULTY AND AFTER A GREAT DEAL OF EFFORT AND TIME BEEN ABLE TO PERSUADE OTHER U.S. GOVERNMENT AGENCIES NOT TO OBJECT TO THE PLAN EMBODIED IN THE SWISS BANKING COMMISSION'S DECREE. A SIGNIFICANT ELEMENT IN THEIR CONSIDERATION WAS THE FACT THAT WE WERE GETTING ACCESS TO ALL INFORMATION INCLUDING NAMES OF INVESTORS EVEN THOUGH UNDER RESTRICTED CONDITIONS. IF THE TERMS WERE TO BE CHANGED WE WOULD HAVE TO GO BACK TO ALL OF THESE GOVERNMENT AGENCIES.

7. THIS WOULD TAKE A SUBSTANTIAL PERIOD OF TIME AND WE MAY FINALLY END UP WITH AN ADVERSE REACTION. THE RAISING OF THIS ISSUE AT THIS TIME WILL SIMPLY CREATE AN IMPOSSIBLE SITUATION AND WOULD MAKE IT IMPOSSIBLE FOR US TO PROCEED. THE SWISS BANKING COMMISSION SHOULD ALSO REALIZE THAT WE HAVE AVAILABLE TO US THE NAMES OF MOST OF THE INVESTORS,  
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THAT ONLY A RELATIVELY SMALL NUMBER OF NAMES WOULD BE INVOLVED, AND AS TO THESE THE VERY SUBSTANTIAL CONCESSIONS BY THE COMMISSION PURSUANT TO WHICH WE HAVE AGREED TO USE THE NAMES ONLY FOR THE PURPOSES OF THE DISTRIBUTION SHOULD BE MORE THAN ADEQUATE.

8. WE HAVE RECEIVED INDICATIONS FROM VARIOUS SOURCES TO THE EFFECT THAT THERE HAVE BEEN ATTEMPTS TO INTIMIDATE AND PRESSURE SWISS CITIZENS WHO ARE ACTING ON BEHALF OF THE PROGRESS GROUP AS WELL AS OFFICIALS OF THE SWISS GOVERNMENT. WE ARE CONCERNED THAT SUCH ATTEMPTS MAY HAVE AN ADVERSE EFFECT UPON THE PEOPLE THREATENED AS WELL AS ON OUR MUTUAL ABILITY TO CONTINUE TO CONDUCT NEGOTIATIONS IN A BUSINESS-LIKE MANNER. WE BELIEVE THAT SUCH ATTEMPTS MAY CONSTITUTE ACTS OF CONTEMPT OF THE ORDERS OF THE U.S. COURT.

9. IN CONNECTION WITH THE FOREGOING, WE HAVE RECEIVED A DOCUMENT FROM MR. SARGEANT, THE SPECIAL COUNSEL, WHICH APPEARS TO BE A FIRST PAGE OF A FORTHCOMING "PHOENIX

ECONOMIC BULLETIN". MR. SARGEANT OBTAINED THE DOCUMENT FROM MR. HARWOOD. THE DOCUMENT STATES "PERMISSION GRANTED TO QUOTE IN WHOLE OR IN PART". IN GENERAL, THE DOCUMENT APPEARS TO BE A SCURRILOUS, MISLEADING MISREPRESENTATION OF WHAT HAS OCCURRED IN THE U.S. COURT. FURTHER, THE DOCUMENT MAKES IT APPEAR THAT THERE WERE SINISTER MOTIVES UNDERLYING OUR DISCUSSION WITH OFFICIALS OF THE SWISS GOVERNMENT AND IS APPARENTLY DESIGNED TO FRUSTRATE AND DETER COMPLIANCE WITH THE U.S. COURT'S ORDERS AND IMPLEMENTATION OF THE PROPOSED DECREE.

10. WE BELIEVE THAT IT WOULD BE A TRAGIC RESULT, BECAUSE OF SUCH MATTERS AS THE DOCUMENT AND THE THREATS REFERRED TO ABOVE, IF THE BEST INTERESTS OF SWITZERLAND, ITS CITIZENS AND AMERICAN INVESTORS WERE PREJUDICED. ACCORDINGLY, WE WOULD APPRECIATE IT IF YOU WOULD INQUIRE OF SWISS GOVERNMENT AUTHORITIES AND DR. STEUDER AS TO WHETHER THEY ARE AWARE OF ANY THREATS OF SUIT OR OTHER PRESSURE BY HARWOOD OR ANYONE ELSE OR HAVE RECEIVED THE PHOENIX ECONOMIC BULLETIN REFERRED TO ABOVE OR OTHER SIMILAR DOCUMENTS SO THAT WE CAN TAKE APPROPRIATE ACTION  
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IN THE U.S.

11. THIS IS ALSO TO CONFIRM OTHER REQUESTS WE HAVE MADE TO YOU. WE HAVE FOR SOME TIME BEEN REQUESTING INFORMATION FROM DR. STEUDER CONCERNING THE PRESENT STATUS OF THE LUGANO LITIGATION BETWEEN DR. STUEDER AND HARWOOD. AS YOU MAY BE AWARE, WE AGREED TO DROP THE MOTION BEFORE THE COURT TO HOLD HARWOOD IN CONTEMPT ON THE PRELIMINARY INJUNCTION IN THE U.S. DISTRICT COURT WHICH REQUIRED HARWOOD TO DROP THE LUGANO LITIGATION IN PART ON THE BASIS OF HARWOOD'S REPRESENTATION THAT HE TAKE ALL NECESSARY ACTION BY MARCH 26, 1976, TO TERMINATE THAT ACTION. FROM THE INFORMATION WE HAVE RECEIVED TO DATE IT APPEARS THAT HARWOOD HAS NOT COMPLIED WITH HIS REPRESENTATION. ON PAST OCCASIONS WHEN WE HAVE SPOKEN TO DR. STEUDER ABOUT THIS MATTER DR. STEUDER HAS INDICATED A WILLINGNESS TO TURN THE INFORMATION OVER TO US. HOWEVER, BECAUSE DR. STEUDER HAS BEEN EXTREMELY BUSY WITH OTHER MATTERS AND OTHER REASONS WE HAVE NOT YET RECEIVED THE INFORMATION. IT IS NOW URGENT THAT WE RECEIVE THIS INFORMATION IMMEDIATELY.

12. EARLY THIS MORNING I REQUESTED FROM YOU THAT YOU APPROACH DR. STEUDER ABOUT THREE OTHER MATTERS THAT ARE:

1. A WRITTEN STATEMENT OF DR. STEUDER'S LATEST PROPOSALS WHICH AS I UNDERSTAND IT WOULD INVOLVE ONLY CLAUSE 1 AND 3 OF HIS ORIGINAL PURPOSE.

2. A WRITTEN STATEMENT FROM DR. STEUDER THAT HE  
WOULD BE WILLING TO PAY THE PROMISORY NOTE DUE AIER IF  
PRESENTED.

3. A STATEMENT AS TO WHETHER DR. STEUDER WOULD BE  
FREED OF LIABILITY UNDER SWISS LAW FOR HIS ACTS AS  
COMMISSIONER OF PROGRESS FOUNDATION AND THE NATURE AND  
EXTENT OF SUCH FREEDOM FROM LIABILITY.

SIGNED IRWIN M. BOROWSKI. END TEXT.

13. DEPARTMENT GREATLY APPRECIATES EMBASSY'S EFFORTS  
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IN THIS CASE AND REQUESTS YOU CONTINUE TO KEEP US FULLY  
INFORMED OF SWISS REACTIONS.

14. BERN 0188 JUST RECEIVED. ASSUME THIS MEETS

STATEMENT REQUESTED PARA 12(1).

15. IN CONVERSATION WITH BOROWSKI SUBSEQUENT TO TYPING  
OF THIS CABLE, HE RAISED THE QUESTION WHETHER ALL THREE  
(STUDER, BUEHLER, AND STUCKI) WOULD BE FREED FROM  
LIABILITY UNDER SWISS LAW. EMBASSY REQUESTED TO CHECK  
THIS AND INFORM DEPARTMENT AND SEC MONDAY MORNING. SISCO

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<< END OF DOCUMENT >>

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 15 SEP 1999  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** n/a  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 30 APR 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** saccheem  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976STATE104475  
**Document Source:** ADS  
**Document Unique ID:** 00  
**Drafter:** EUR/CE:SMKLINGAMAN:SEC/ENFORCEMENT:IBOROWSKI:R  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** n/a  
**Film Number:** D760165-0841  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t197604115/baaaeoue.tel  
**Line Count:** 249  
**Locator:** TEXT ON-LINE, TEXT ON MICROFILM  
**Office:** ORIGIN EUR  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 5  
**Previous Channel Indicators:**  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** saccheem  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 10 MAY 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <10 MAY 2004 by woolflhd>; APPROVED <20 SEP 2004 by saccheem>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** SEC V AIC CASE  
**TAGS:** CFED, SZ  
**To:** BERN  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006